IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 52 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

HASMUKHLAL GANDALAL

Appearance:

1. WEALTH TAX REFERENCE No. 52 of 1991
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 24/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', under the provisions of sec. 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act') :

"Whether the Appellate Tribunal is right in law and on facts in confirming the cancellation of the penalties levied by the WTO u/s 18(1)(c) of the W.T. Act?"

2. Standing Counsel Ms. Mauna Bhatt has appeared for the applicant revenue, whereas nobody has appeared for the respondent assessee, though the respondent assessee has been duly served with the notice of this court.

3. The facts giving rise to this reference, in a nutshell, are as under :

4. The assessee filed his wealth-tax return showing value of his property named Geeta Talkies as Rs. 3,36,485/-. During the course of the assessment proceedings, the Wealth-tax Officer asked the assessee to get the said property valued by an approved valuer and, therefore, the assessee got the said property valued by an approved valuer. Before the assessment was completed, the assessee filed a revised return on the basis of the valuation arrived at by the approved valuer stating that the value of the property was Rs. 6,87,750/-.

5. On the basis of the revised return, the WTO assessed the wealth of the assessee and also initiated penalty proceedings under the provisions of sec. 18(1)(c) read with Explanation 4 to the said section on the ground that the assessee had furnished inaccurate particulars of the said asset in the original return filed by the assessee. The WTO ultimately imposed penalty upon the assessee.

6. Being aggrieved by the order of penalty imposed by the WTO, the assessee filed an appeal before the Deputy Commissioner of Wealth-tax (Appeals). After hearing the concerned parties, the Dy. Commissioner of Wealth-tax (Appeals) deleted the penalty on the ground that there was no concealment by the assessee. Moreover,

according to him, immediately upon getting the valuation report from the approved valuer, the assessee had filed the revised return and the said revised return was filed before completion of the assessment. In the circumstances, according to the appellate authority, no penalty could have been levied under the provisions of sec. 18(1)(c) read with Explanation 4 to the said section.

7. Being aggrieved by the order passed in appeal, the revenue preferred an appeal before the Tribunal. The Tribunal ultimately confirmed the order passed by the Dy. Commissioner of Wealth-tax(Appeals). In the aforesaid circumstances, the reference has been made to this court.

8. Learned Standing Counsel Ms. Bhatt appearing for the revenue has submitted that the Tribunal committed an error while upholding the order passed by the Dy. Commissioner of Wealth-tax (A). According to the learned counsel, in the instant case, the assessee did not reveal correct value of the property in the original return. It has been submitted by her that the assessee had valued the said property at Rs. 3,36,485/-. The WTO was not satisfied with the valuation and, therefore, he asked the assessee to get the property valued by an approved valuer. In pursuance of the said direction given by the Wealth-tax Officer, the assessee got the property valued by an approved valuer and only upon knowing that value of the property on the valuation date was Rs. 6,87,750/-, the assessee filed a revised return showing value of the property as ascertained by the approved valuer.

9. It has been submitted by the learned counsel that the assessee had an intention to furnish "inaccurate particulars" of the asset and only for that reason he initially valued the property at Rs. 3,36,485/-. It has been further submitted by her that had the WTO not given the direction to the assessee to get the property valued by an approved valuer, the assessee would not have filed a revised return and in that event, he would not have stated correct value of the property. It has been, therefore, submitted by the learned counsel that the assessee had an intention to give inaccurate particulars of the property and, therefore, in the original return, the value of the property was grossly undervalued.

10. It has been, therefore, submitted by the learned counsel that as per law laid down in the case of CIT w. A. Sreenivasa Pai, 242 ITR 29, the Tribunal ought to have set aside the order passed by the Dy. Commissioner of Wealth-tax (Appeals). It has been also submitted that

this court should presume that the assessee wanted to conceal the particulars of his asset and, therefore, only with that intention the initial return had been filed by the assessee showing that the property was worth Rs. 3,36,485/-.

11. We have heard the learned Standing Counsel at length and have also considered the facts and the circumstances in which the reference has been made to this court.

12. In our opinion, the Tribunal was not in error when it confirmed the order passed by the Dy. Commissioner of Wealth-tax (Appeals).

13. It is pertinent to note that the assessee had filed the revised return within the prescribed time limit. The said revised return was filed before the assessment had been completed.

14. Upon perusal of sec. 15 of the Act, it is very clear that it is open to the assessee to file a revised return within the time limit prescribed by the said section. It is not in dispute that before the assessment had been completed, the assessee had filed his revised return for both the years stating correct valuation of the property in question.

15. As the assessee had revealed correct valuation of the property before the assessment proceedings had been completed, it cannot be said that the assessee had furnished 'inaccurate particulars' of the property situated at Porbandar. The WTO had relied upon Explanation 4 to sec. 18, which reads as under :

> "Where the value of any asset returned by any person is less than seventy per cent of the value of such asset as determined in an assessment under section 16 or section 17, such a person shall be deemed to have furnished inaccurate particulars of such asset within the meaning of clause (c) of this sub-section, unless he proves that the value of the asset as returned by him is the correct value."

In the instant case, the value of the asset returned had been revised by the assessee before the assessment had been completed. Immediately upon knowing the correct valuation of the asset in question, the assessee had filed a revised return. As stated hereinabove, it is not in dispute that the revised return was filed within the

prescribed period and, therefore, it was the duty of the WTO to assess the asset as per the value of the asset shown in the revised return. It is not in dispute that in the revised return the assessee had valued the asset in question correctly as per the valuation arrived at by the approved valuer.

16. It is pertinent to note that penalty can be imposed only when the revenue comes to a conclusion that the assessee had a mala fide intention. Whether the assessee is having mala fide intention is a question of fact. In the instant case, the Dy. Commissioner of Wealth-tax (Appeals) has come to a conclusion that the assessee had no intention to furnish inaccurate particulars and the said finding has been confirmed by the Tribunal. In the instant case, we, therefore, cannot presume that the assessee had a mala fide intention to furnish inaccurate particulars. As mens rea is an essential ingredient of an offence and as both the appellate authorities have arrived at a finding that the assessee had no intention to furnish inaccurate particulars of the asset in question, we would not like to come to a different conclusion with regard to intention of the assessee.

17. Looking to the facts of the case and the legal provisions referred to hereinabove, in our opinion, it cannot be said that the Tribunal had committed an error while upholding the appellate order passed by the Deputy Commissioner of Wealth-tax (Appeals).

18. In the circumstances, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference, thus, stands disposed of with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

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